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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,449	09/19/2003	Gary Filice	EAST-003	8352

7590 01/26/2005

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Chicago, IL 60606

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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DETAILED ACTION

The reply filed 10/4/04 is not fully responsive to the Office communication mailed 8/11/04 for the reason(s) set forth below.

A listing of the MPEP concerning a Species restriction is noted below

MPEP 808.01(a) Species

Where there is no disclosure of relationship between species (see MPEP § 806.04(b)), they are independent inventions and election of one invention following a requirement for restriction is mandatory even though applicant disagrees with the examiner. There must be a patentable difference between the species as claimed. See MPEP § 806.04(h). Since the claims are directed to independent inventions, restriction is proper pursuant to 35 U.S.C. 121, and it is not necessary to show a separate status in the art or separate classification.

A single disclosed species must be elected as a prerequisite to applying the provisions of 37 CFR 1.141 to additional species if a generic claim is allowed.

Even if the examiner rejects the generic claims, and even if the applicant cancels the same and admits that the genus is unpatentable, where there is a relationship disclosed between species, such disclosed relation must be discussed and reasons advanced leading to the conclusion that the disclosed relation does not prevent restriction, in order to establish the propriety of restriction.

Election of species should not be required if the species claimed are considered clearly unpatentable (obvious) over each other. In making a requirement for restriction in an application claiming plural species, the examiner should group together species considered clearly unpatentable over each other, with the statement that restriction as between those species is not required.

Election of species should be required prior to a search on the merits (A) in all applications containing claims to a plurality of species with no generic claims, and (B) in all applications containing both species claims and generic or Markush claims.

In all applications in which no species claims are present and a generic claim recites such a multiplicity of species that an unduly extensive and burdensome search is required, a requirement for an election of species should be made prior to a search of the generic claim.

In all applications where a generic claim is found allowable, the application should be treated as indicated in MPEP § 809.02 (b), § 809.02 (c), or § 809.02 (e). If an election is made pursuant to a telephone requirement, the next action should include a full and complete action on the elected species as well as on any generic claim that may be present.

The applicant requested clarification on the species groups prior to providing a traversal argument to the restriction. This response is to reply to that request for

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clarification. The group listings as suggested by applicant are not required under a species restriction and it appears as though applicant may be confused between an election of species and a restriction between groupings. This letter is applicant's requested clarification and applicant is given 30 days to provide the traversal as a courtesy to applicant.

Since the above-mentioned reply appears to be *bona fide*, applicant is given a TIME PERIOD of **ONE (1) MONTH** or **THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Conclusion

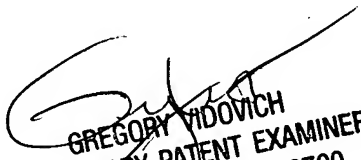
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is (571) 272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571) 272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 16, 2005


GREGORY YIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700